

IP 06-0079-CR 1 T/F US v Clonce  
Magistrate Kennard P. Foster

Signed on 8/22/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

USA,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
CLONCE, RICHARD LEE,	)	CAUSE NO. IP06-0079-CR-01-T/F
	)	
Defendant.	)	

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Cause No. IP 06-79-CR-01 (T/F)
	)	
RICHARD L. CLONCE,	)	
	)	
Defendant.	)	

**MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable John Daniel Tinder, Judge, on August 21, 2006, designating this Magistrate Judge to conduct a hearing on the Petition for Summons or Warrant for Offender Under Supervision filed with the Court on August 18, 2006, and to submit to Judge Tinder proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). All proceedings regarding this matter were held on August 22, 2006, in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*. Mr. Clonce appeared in person and his appointed counsel, James McKinley, Office of the Indiana Federal Community Defender’s Office. The government appeared by Joseph Vaughn, Assistant United States Attorney. U. S. Parole and Probation appeared by Jay Hardy, U. S. Parole and Probation Officer, who participated in the proceedings.

The Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. That James McKinley, Office of the Indiana Federal Community Defender, was present and appointed by the Court to represent Mr. Clonce in regard to the pending Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Mr. Clonce and his counsel who informed the Court they had read and understood the specifications of violation charged herein and waived further reading thereof.

3. That Mr. Clonce was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petition.

4. That Mr. Clonce would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. That Mr. Clonce had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. That if the preliminary hearing resulted in a finding of probable cause that Mr. Clonce had violated an alleged condition or conditions of his supervised release set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Tinder's designation entered on August 21, 2006.

7. Mr. Clonce stated his readiness to waive the preliminary hearing. Mr. Clonce then waived, in writing, the preliminary hearing and he was held to answer.

8. Mr. Clonce, by counsel, stipulated that he committed the specified violations set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed on August 18, 2006, described as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p><b>“The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.”</b></p> <p>On May 15 and 22, 2006, the offender submitted urine samples which tested positive for cocaine. On May 22, 2006, the offender signed an admission form indicating that he had used a prohibited controlled substance resulting in his positive drug test from May 15, 2006. Kroll Laboratories confirmed the results of both tests.</p>
2	<p><b>“The defendant shall submit to random urinalysis testing and complete any substance abuse treatment programs as deemed necessary by the supervising U. S. Probation Officer.”</b></p> <p>The offender failed to report for the submission of urine samples at Volunteers of America on May 6, 9, 11, 13, and 16, 2006. He also failed to report on June 1, 3 and 24, 2006. He again failed to report on July 1 and 9, 2006.</p>
3	<p><b>“The defendant shall reside for a period of up to 120 days at a Community Corrections Center as directed by the probation officer and shall observe the rules of that facility.”</b></p> <p>On June 9, 2006, Mr. Clonce signed a Waiver of Hearing form agreeing to a residential placement at the Volunteers of America Community Corrections Center for up to 120 days, and the same was ordered by the Court on June 14, 2006. Mr. Clonce began his stay at Volunteers of America on July 12, 2006. On August 15, 2006, personnel from Volunteers of America advised Mr. Clonce had failed to report back the facility as scheduled. As of this writing, the offender has not returned to the facility.</p>

The Court placed Mr. Clonce under oath and directly inquired of him whether he admitted violations of the specifications of his supervised release set forth above. Mr. Clonce stated that he admitted the above violations as set forth. The Court now finds there is a basis in fact for his admissions and accepts same.

Counsel for the parties further stipulated the following:

1) Mr. Clonce has a relevant criminal history category of II. *See*, U.S.S.G. §7B1.4(a).

2) The most serious grade of violation was stipulated to by the parties to be a Grade B violation, pursuant to U.S.S.G. §7B1.1(b).

3) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release, the range of imprisonment applicable to Mr. Clonce is 6-12 months.

4) The parties did not agree on the appropriate disposition of the case.

9. The defendant, by counsel, and the government each presented evidence regarding appropriate disposition of the case.

The Court, having heard the admissions of the defendant, the stipulations and evidence submitted by the parties, and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant violated the above-delineated conditions of his supervised release. The defendant's supervised release is therefore **REVOKED** and Richard L. Clonce is sentenced to the custody of the Attorney General or his designee for a period of 6 months. After service of his sentence, the defendant shall not be subject to supervised release.

You are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B) and (C) and Rule 72(b) of the *Federal Rules of Civil Procedure*. You shall have within ten days after being served with a copy of this Report and Recommendation to serve and file written objections to the proposed findings of facts and conclusions of law and recommendations of this Magistrate Judge. If written objections to the Magistrate Judge's proposed findings of facts and recommendations are made, the District Judge will make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which an objection is made.

**WHEREFORE**, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation revoking Mr. Clonce's supervised release and the sentence imposed of imprisonment of 6 months, in the custody of the Attorney General or his designee. There shall be no term of supervised release at the conclusion of Mr. Clonce's term of incarceration. Service of Mr. Clonce's term of imprisonment is to begin immediately.

The Magistrate Judge requests that Jay Hardy, U. S. Parole and Probation Officer, prepare for submission to the Honorable John Daniel Tinder, Judge, as soon as practicable, a supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

**IT IS SO RECOMMENDED** this 22<sup>nd</sup> day of August, 2006.

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Kennard P. Foster, Magistrate Judge  
United States District Court  
Southern District of Indiana

Distribution:

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